vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO.1332 OF 2005**
IN
SUMMARY SUIT NO.2395 OF 2003

M/s.Teckmen Systems ... Plaintiff

V/s.

HMT Limited ... Defendant

Mr.L.A. Kripalani for Plaintiff
Mr.B.G. Saraf for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 28, 2006**

**P.C.:**

. This Motion has been filed by the Defendant for setting aside the ex-parte decree dated 23.4.2004. The Motion has been taken out in April 2005. The only reason mentioned in the affidavit in support of the Motion for setting aside the decree is that their representative through oversight did not inform his superior about the Summons which was received by the office of the Defendant in August 2003. The Defendant contends that they became aware of the proceedings only when the warrant of attachment was received in March 2005.

2. It is submitted on behalf of the Plaintiff that while the warrant of attachment was stayed, an amount of Rs.2 lacs has already been deposited by the Defendant in this Court pursuant to the directions of this Court. He therefore submits that the decree be set aside and the

defendant be permitted to file its written statement.

3. As rightly pointed out by the learned Advocate for the Plaintiff, in a Summary Suit, the defendant must point out special circumstances as to why the decree should be set aside. These are the rigours of Order 37 Rule 4. The only circumstance on which basis the defendant requests that the decree be set aside is that through oversight their representative did not inform his superior about the receipt of the Summons. In my view, this cannot be a ground on which the decree can be set aside.

4. Motion is, therefore, dismissed.